

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
AMERICAN FAMILY ASSOCIATION)	EB-03-IH-0427
)	
Licensee of Noncommercial Educational Stations)	Facility Nos. 88121, 82835
WAEF(FM), Cordele, Georgia)	
WBJY(FM), Americus, Georgia)	

MEMORANDUM OPINION AND ORDER

Adopted: April 12, 2004

Released: April 12, 2004

By the Deputy Chief, Investigations and Hearings Division, Enforcement Bureau:

I. Introduction

1. In this *Order*, we admonish American Family Association (“AFA”), licensee of noncommercial educational Stations WAEF(FM), Cordele, Georgia, and WBJY(FM), Americus, Georgia, for broadcasting advertisements in violation of Section 399B of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 399b, and Section 73.503 of the Commission's rules, 47 C.F.R. § 73.503. We have carefully reviewed the record, including the complaint and AFA's response, and conclude that the licensee has violated the pertinent statutory and Commission underwriting rule provisions. While we believe that no monetary sanction is warranted at this time, we find that an admonishment is necessary to redress the statutory and rule violations.

II. Background

2. In response to a listener complaint that AFA's noncommercial stations had aired commercial advertising,¹ we issued two letters of inquiry to the licensee.² AFA responded to our December 1, 2003, inquiries by its submissions dated December 31, 2003.³ Advertisements are defined by the Act as program material broadcast "in exchange for any remuneration" and intended to "promote any service, facility, or product" of for-profit entities.⁴ Although

¹ See Letter of Complainant to Fred L. Broce, District Director, FCC, dated September 10, 2003 (“*Complaint*”).

² See Letters of William D. Freedman, Deputy Division Chief, Investigations & Hearings Division, Enforcement Bureau, to American Family Association, dated December 1, 2003 (“*LOIs*”).

³ See Letter of Patrick J. Vaughn, Counsel for American Family Association, to Kenneth M. Scheibel, Jr., Investigations & Hearings Division, Enforcement Bureau, dated December 31, 2003 (“*WAEF(FM) Response*”); Letter of Patrick J. Vaughn, Counsel for American Family Association, to Kenneth M. Scheibel, Jr., Investigations & Hearings Division, Enforcement Bureau, dated December 31, 2003 (“*WBJY(FM) Response*”).

⁴ 47 U.S.C. §399b(a).

noncommercial educational stations may not broadcast advertisements, contributors of funds to noncommercial stations may receive on-air acknowledgements.⁵ The Commission has held that such acknowledgements may be made for identification purposes only, and should not promote the contributors' products, services, or business.⁶

3. Specifically, such announcements may not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent or lease.⁷ At the same time, however, the Commission has acknowledged that it is at times difficult to distinguish between announcements that promote versus those which merely identify the underwriter. Consequently, it expects only that licensees exercise reasonable, good-faith judgment in this area.⁸ In sum, the Commission will defer to licensee judgments that are made in good faith and are objectively reasonable.⁹

III. Discussion

4. The key facts in this case are not in dispute. AFA represents that it received general contributions from Dr. Joel M. Johnson and that Stations WAEF(FM) and WBJY(FM) aired announcements acknowledging his support.¹⁰ AFA also admits that the announcements, since discontinued, departed from its own internal underwriting guidelines and the Commission's requirements.¹¹ AFA further represents that the announcement made over WBJY(FM) encouraging listeners to attend the Jacki Velasquez concert was "spontaneous" and uncompensated, and argues that it therefore constituted a "public service announcement" that did not violate Section 399B of the Act.¹² AFA represents that the announcement made over WBJY(FM) on behalf of Owens Sporting Goods of Albany was a "free sample," and uncompensated, but admits that its message did not comply with either its own or Commission underwriting guidelines.¹³

⁵ See Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations (1986), Public Notice, *republished*, 7 FCC Rcd 827 (1992) ("*Public Notice*"); Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations, Memorandum Opinion and Order ("*1982 Policy Statement*"), 90 FCC 2d 895 (1982), *recon. granted in part*, 97 FCC 2d 255 (1984).

⁶ *Id.*

⁷ *Id.*

⁸ See *Xavier University*, Memorandum Opinion and Order, 5 FCC Rcd 4920 (1990).

⁹ See *Minority Television Project, Inc. (KMTP-TV)*, Forfeiture Order, 18 FCC Rcd 26611 (EB 2003) (*application for review pending*); *Window to the World Communications, Inc. (WTTW(TV))*, Notice of Apparent Liability, DA 97-2535 (MMB December 3, 1997), Forfeiture Order, 15 FCC Rcd 10025 (EB 2000) (*forfeiture reduced*).

¹⁰ *WAEF(FM) Response* at 1-2.

¹¹ *Id.*

¹² *WBJY(FM) Response* at 1-2.

¹³ *Id.* AFA indicates that this particular announcement was uncompensated but was aired in order to

5. We find that the subject underwriting announcements made on behalf of Dr. Joel M. Johnson and Owens Sporting Goods of Albany exceed the bounds of what is permissible under Section 399B of the Act, and the Commission's pertinent rules and policies, under the "good-faith" discretion afforded licensees under *Xavier, supra*, because they encourage listeners to patronize the for-profit underwriters' services or businesses, or otherwise describe the underwriters in prohibited comparative, qualitative terms, and were made in exchange for consideration.¹⁴ We agree that the announcement promoting the Jacki Velasquez concert was acceptably aired pursuant to the "transitory event" exception that pertains to uncompensated announcements concerning local events of listener interest.¹⁵ In view of the foregoing, we conclude that a sanction is appropriate. Given the unblemished enforcement record of the licensee of the stations involved, and in view of the totality of circumstances of this case, we conclude that an admonishment, and not a monetary sanction, is appropriate.¹⁶

IV. Ordering Clauses

6. Accordingly, IT IS ORDERED that American Family Association, licensee of noncommercial educational Stations WAEF(FM), Cordele, Georgia, and WBJY(FM), Americus, Georgia, IS ADMONISHED for broadcasting advertisements in violation of Section 399B of the Act, 47 U.S.C. § 399B, and Section 73.503 of the Commission's rules, 47 C.F.R. § 73.503.

7. IT IS FURTHER ORDERED, that the complaint filed in this matter IS GRANTED to the extent indicated herein, and IS OTHERWISE DENIED, and the complaint proceeding IS HEREBY TERMINATED.¹⁷

encourage the sale of a larger underwriting package to the merchant.

¹⁴The announcements made on behalf of Dr. Joel M. Johnson were supported by consideration consisting of his monthly contributions to the licensee. See *WAEF(FM) Response* at 2. Because the announcement made on behalf of Owens Sporting Goods of Albany was aired in order to encourage the sale of a larger underwriting package to the merchant, AFA reasonably anticipated consideration. See *WBJY(FM) Response* at 1-2; *1982 Policy Statement*, 90 FCC 2d 895, 911, ¶ 26 (1982)(public broadcasters are prohibited from airing announcements promoting "an entity or individual's goods or services where the broadcaster receives or reasonably anticipates the receipt of consideration from such individual or entity").

¹⁵ *1982 Policy Statement*, 90 FCC 2d 895, 911-12, ¶¶ 26-29 (1982).

¹⁶ See 47 C.F.R. § 1.80 (b)(4).

¹⁷ For purposes of the proceeding initiated by this *Memorandum Opinion and Order*, AFA shall be the only party to this proceeding.

8. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order shall be sent, by Certified Mail -- Return Receipt Requested, to Patrick J. Vaughn, Esq., Counsel for American Family Association, P.O. Box 2440, Tupelo, Mississippi 38803, and to the complainant.

FEDERAL COMMUNICATIONS COMMISSION

William D. Freedman
Deputy Chief, Investigations and Hearings Division
Enforcement Bureau

Attachment A

Set forth below is the text of an announcements aired on Station WAEF(FM), Cordele, GA, and/or WBJY(FM), Americus, Georgia, between August and December, 2003:

Dr. Joel M. Johnson (45 seconds)

For surgical excellence that's close to home, Dr. Joel M. Johnson offers both the advanced care and convenience you deserve, for all your general and vascular surgery needs. You may contact Dr. Joel M. Johnson at the South Georgia Surgical Clinic at 382-9733. Dr. Johnson's lifelong commitment has been to help people live whole, healthy lives and he is confident that you will notice this the moment that you meet. Dr. Joel M. Johnson is a proud underwriter of positive Christian music in South Georgia. 382-9733.

Jackie Velazquez (15 seconds)

[Announcement aired while station host introduces the artist's recording]:

And now here's Jackie Velazquez. She's going to be at Wild Adventures tomorrow night, did you know that? Don't miss it!

Owens Sporting Goods of Albany (30 seconds)

This sports report is brought to you by Owens Sporting Goods of Albany. Owens has a huge selection of sports equipment and clothing for families, churches, recreational departments, and schools, including team logo merchandise. So be sure to see the good folks at Owens Sporting Goods for that.